IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

WRIT PETITION NO.4497 OF 2004

Shri Vasant Narsinhrao Kulkarni .. Petitioner

Versus

Hon'ble District Judge & Ors. .. Respondents

Mr.P.R.Arjunwadkar for the petitioners

Mr.V.P.Malvankar for respondent no.1 to 3

CORAM: A.P.SHAH &
S.U.KAMDAR, JJ

DATED: 15TH SEPTEMBER, 2004

P.C.:

1. Heard advocates.

2. The petitioner challenges the order of compulsory retirement issued by the District Judge, Solapur in exercise of power under Rule 10(4)(b)(c) and 65(1)(b) of Maharashtra Civil Services (Pension) Rules, 1982. By the impugned order the petitioner has been compulsory retired from government service with 3 months pay and allowances

etc.

3. We have heard the learned counsel appearing for the parties. We have also perused the confidential records of the petitioner which was made available by the learned A.G.P. Malvankar. The entire scope under Article 226 against the order of compulsory retirement has been considered in State of U.P. and another v. Bihari Lal reported in AIR 1995, Supreme Court 1161 and the court observed held as follows:

> "We have issued notice to the respondent who appeared through counsel and filed counter affidavit. It is now settled law that the entire service record should be considered before taking a decision to compulsorily retire a Government servant exercising the power under Rule 56(j) of the Fundamental Rules. It is not necessary that adverse remarks should be communicated or every remark, which may sometimes be categorised as adverse, be communicated. It is on an overall assessment of the record, the authority would reach a decision whether the Government servant should be compulsorily retired in public interest. In an appropriate case, there may not be tangible material but the reputation of officer built around him could be such that his further continuance would imperil the efficiency of the pubic service and would breed

> indiscipline among other public servants. Therefore, the Government could legitimately exercise their power to compulsorily retire a Government servant. The Court has to see whether before the exercise of the power, the authority has taken into consideration the overall record even including some of the adverse remarks, though for technical reasons might be expunged on appeal or revision. What is needed to be looked into is the bona fide decision taken in the public interest to augment efficiency in the public service. In the absence of any mala fide exercise of power or arbitrary exercise of power, a possible different conclusion would not be a ground for interference by the Court/Tribunal in exercise of its judicial review. In this case, the judgment was delivered on May 4, (5), 1992 and on the same day hardly even the ink of Judge's signature dried up, he was reinstated. He is due to retire on his attaining the age of superannuation on May 31, 1995. Hardly nine months remain for him to reach superannuation. In this view of the matter, we find that no useful purpose would be served in allowing the appeal. However, it is needless to emphasise that in cases of serious nature, the Government should expeditiously pursue the remedy and seek appropriate directions from the Court. Leisurely, the appeal was filed on September 18, 1992 after reinstatement."

4. In the instant case the review committee found the petitioner unfit for continuation after taking into consideration the report of the Civil Judge, (J.D.) Malshiras while he was working on the post of the record keeper. The confidential reports of the petitioner, in particular for the period after his promotion to the post of Assistant

Superintendent, are far from being satisfactory. It appears that one increment of the petitioner was being permanently withheld for two years in Departmental Enquiry No.8 of 1991. Further in Departmental Enquiry 10 of 1991 which was launched against the petitioner he was permanently debarred from further promotion. Charge in the said Departmental Enquiry was that the petitioner had failed to maintain proper account of amount drawn on the abstract bills. One more Departmental Enquiry was initiated against the petitioner vide Departmental Enquiry No.8 of 1994. Charge in the said Departmental Enquiry was that he had caused loss of record. However, the petitioner was exonerated from the charges levelled against him in the said Departmental Enquiry.

5. The report by the Civil Judge dated 29th December 2001 states that the petitioner is unable solve the problems of administration and maintain smooth working in the office. We have gone through the confidential records and it is seen that he has been rated as an average worker. In the

circumstances, no interference is warranted with the impugned order of compulsory retirement. Petition is accordingly dismissed.